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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GRANT CHRISTOPHER JOHNSON,

Defendant and Appellant.

G042215

(Super. Ct. No. 08HF2272)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed.

Douglas G. Benedon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Charged with first degree robbery (Pen. Code, §§ 211/215, subd. (a)), assault with a deadly weapon (knife) (Pen. Code, § 245, subd. (a)(1)), and a misdemeanor count of child endangerment (Pen. Code, § 273a), appellant Grant Johnson was convicted by a jury of the robbery, simple assault, and child endangerment. The trial court sentenced him to eight years imprisonment.

We appointed counsel to represent appellant on appeal. While not arguing against appellant he filed a brief which set forth the facts of the case and advised us he was unable to find an issue to argue on appellant's behalf.

We informed appellant he had 30 days to file written argument in his own behalf. No such communication was filed. We have reviewed the record of appellant's trial and find ourselves in agreement with his trial counsel: There is no arguable error in the proceedings against appellant. (*People v. Wende* (1979) 25 Cal.3d 436.)

STATEMENT OF FACTS

Appellate counsel, in keeping with his duties under *Anders v. California* (1967) 386 U.S. 738 and *People v. Wende, supra*, 25 Cal.3d 436, has provided us a detailed statement of facts. We are unable to find any significant error or omission in that statement of facts and therefore, in the interest of judicial economy, adopt it for our opinion:

A. The Prosecution Case

On November 25, 2008, at approximately 3:30 in the afternoon, Jacobo Hernandez was filling his car with gas at the ARCO station location at the intersection of Newport Boulevard and Bay Street in Costa Mesa. Leiha Federico, a woman Hernandez had never met, approached him and asked "What's happening?" Hernandez responded he was getting gas for his car. Federico smiled, said her name was Crystal, and told Hernandez she was "working," which Hernandez understood meant she was a prostitute.

Hernandez told Federico he had no money to pay her. Federico asked how much money he had. Hernandez told her \$20. She said that was fine, and that she had a place at a nearby motel. The two left together and drove to the Sandpiper Motel.

When Federico and Hernandez got to her motel room, she directed him to sit in a chair next to the bed. Hernandez saw there was a baby sleeping on the bed, who awoke when he entered. Hernandez gave Federico the \$20, but she said she wanted more. Hernandez said he did not have any more. Federico then called out “Nick,” or something like that, and appellant came running out from a closet or behind a door. Appellant, who had a knife in his hand, confronted Hernandez and demanded “How come you don’t have any more money?” Hernandez tried to protect his wallet by placing his hand over his front pocket. Appellant forcefully removed the wallet, ripping Hernandez’s pocket in the process. Appellant took the money, gave Hernandez back his wallet, then opened the door. Hernandez left.

Hernandez went to his car and called the police. At that point Hernandez first realized his hand was bleeding. At no point during the struggle with appellant did Hernandez feel metal on his hands, and he does not know how he was cut.

Costa Mesa Police Officers William Adams and Jodi Schmidt responded to the dispatch call. Schmidt, a rookie officer, spoke to Hernandez. Adams and Schmidt then drove to the Sandpiper Motel, where they were joined by additional officers. They went to the room Hernandez had told them. Through the partially open curtains, Adams could see appellant and Federico, who was holding the baby. Adams drew his gun, knocked on the window, and ordered them out of the room. Federico came out first, carrying her baby, followed by appellant. Adams found a knife in the room near where appellant had been sitting. It did not have any blood on it. Hernandez later identified the knife as the one appellant had been holding.

Schmidt first interrogated Federico, then appellant. Appellant was non-cooperative, but not aggressive. He refused to give Schmidt any information. She

became frustrated and told appellant “if I can pin this on you I will.” Schmidt conceded this was a bad choice of words, but denied anything like that actually occurred. Schmidt found \$83 – four 20 and three one-dollar bills – partially hanging out of appellant’s front pocket.

B. The Defense Case¹

On November 25, 2008, Federico and appellant were living at the Sandpiper Motel in Costa Mesa. They had been living there about three weeks. At around 3:00 that afternoon, Federico went to use the pay phones at a liquor store at the intersection of Newport Boulevard and Bay Street. Federico called a couple of churches to see if they would be delivering food for Thanksgiving, and a T.J. Maxx store where she had applied for a job.

As Federico was walking back to her motel, she saw Hernandez at the ARCO station filling his car with gas. Federico had spoken to Hernandez on approximately three prior occasions. Each time she had her baby with her. Hernandez asked Federico what she was doing. She told him she had just used the pay phones and was on her way home. Hernandez offered to give her a ride. Federico told Hernandez she was looking for work. Hernandez told her they were looking for someone where he worked to answer phones. After he finished pumping gas, Hernandez gave Federico a ride to the motel.

Federico had Hernandez come into the room so he could speak to appellant about the job offer. Federico never said anything to Hernandez about having sex for money, and he never offered her any money. Appellant was in the bathroom when Hernandez and Federico came into the room. Federico told Hernandez to take a seat and started telling appellant about how Hernandez could get her a job. At that point Hernandez made a nasty comment about Federico’s breasts. Federico told appellant to

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Federico testified on her own behalf at trial. Appellant did not testify.

make him leave. Appellant opened the door but Hernandez would not leave, so appellant pushed him out. Hernandez sat in his car for about 10 minutes, then left.

Appellant did not take any money from Hernandez or touch his wallet. Appellant never had the knife in his hand. Throughout the entire incident, the knife was on the table in a closed position.

DISCUSSION

The initial question in any criminal case is whether there is evidence to support the verdict. Counsel for appellant's codefendant tried that avenue of approach, but he reached a very abrupt dead end. Appellant's attorney appears to have recognized, as did cocounsel, and as have we, that there was no argument to be made there.

As this statement of facts makes clear, the trial was a credibility contest. The jury believed Hernandez.² It is axiomatic that the testimony of one witness, believed by the jury, is sufficient to support a verdict if not inherently incredible. There was nothing inherently problematic about Hernandez's testimony. Indeed, it would be a lot more difficult to explain why he would resist leaving the motel room if the facts were as related by Johnson. The facts related by Hernandez made sense to the jury and we can find nothing to undermine their confidence in them. So there certainly seems to have been sufficient evidence to support the charges against appellant.

Nor was counsel able to find any infirmity in the jury instructions – the most fertile ground for error in cases such as this. We have reviewed the instructions and are likewise unable to find any flaw in them. Nor are we able to find sentencing error. We have reviewed the transcripts of the trial for other possibilities, but have come up empty.

The fact is this was not a complicated case. The facts were easily understood; it was just a matter of whose recounting of those facts the jury believed.

²

The jury returned the same verdict as to codefendant Federico.

No error infected the trial or the sentencing. The judgment is therefore affirmed.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.